

SALE OF GOVERNMENT PROPERTY GENERAL SALE TERMS AND CONDITIONS

INVITATION FOR BIDS NO.

PAGE

1. INSPECTION.

The Bidder is invited, urged, and cautioned to inspect the property prior to submitting a bid. Property will be available for inspection at the places and times specified in the Invitation.

2. CONDITION AND LOCATION OF PROPERTY.

Unless otherwise provided in the Invitation, all property listed therein is offered for sale "as is" and "where is." Unless otherwise provided in the Invitation, the Government makes no warranty, express or implied, as to quantity, kind, character, quality, weight, size, or description of any of the property, or its fitness for any use or purpose. Except as provided in Conditions No. 12 and 14 or other special conditions of the Invitation, no request for adjustment in price or for rescission of the sale will be considered. This is not a sale by sample.

3. CONSIDERATION OF BIDS.

a. Unless otherwise provided in the Invitation, telegraphic or telephonic bids will not be considered.

b. The Bidder agrees that his/her bid will not be withdrawn within the period of time specified for the acceptance thereof following the opening of bids (60 calendar days if no period is specified by the Government or by the Bidder, but not less than 10 calendar days in any case) and that during such period his/her bid will remain firm and irrevocable. The Government reserves the right to reject any or all bids, including bids under which a Bidder would take unfair advantage of the Government or other Bidders, to waive any technical defects in bids, and unless otherwise specified by the Government or by the Bidder, to accept any one item or group of items in the bid, as may be in the best interest of the Government. Unless the Invitation otherwise provides, a bid covering any listed item must be submitted on the basis of the unit specified for that item and must cover the total number of units designated for that time.

4. FORMS OF BID DEPOSITS AND PAYMENTS.

Unless otherwise provided in the Invitation, bid deposits (when required by the Invitation) and payments shall be in U.S. currency or any form of credit instruments other than promissory notes, made payable on demand in U.S. currency: Provided, That uncertified personal or business checks must be first party instruments: Provided further, That if in connection with any prior sale, the Bidder or Purchaser tendered an uncertified personal or business check which was not paid by the drawee for any reason and the Bidder, Purchaser, and the Drawer of the check were so notified in writing by the selling agency, uncertified personal or business checks will not be an acceptable form of bid deposit or payment. Bids submitted after the effective date specified in the written notification referred to which are not accompanied by the property bid deposit will be summarily rejected.

5. BID PRICE DETERMINATION.

When bids are solicited on a unit price basis, Bidders will insert their unit prices and total prices in the space provided for each item.

a. In the event the Bidder inserts a total price on the item but fails to insert a unit price, the Government will determine the unit price by dividing the total price by the quantity of the item set out in the Invitation. The unit price so determined shall be used for the purpose of bid evaluation, award, and all phases of contract administration.

b. When bids are solicited on a "lot" basis, Bidders should submit a single total price in the Total Price Bid column of the bid sheet. Bidders should not make any entry in the Unit Price Bid column. In the event a Bidder submits a total bid price and also a unit bid price which are not identical, the unit bid price will not be considered.

6. PAYMENT.

The Purchaser agrees to pay for property awarded to him/her in accordance with the prices quoted in his/her bid. Subject to any adjustment made pursuant to other provisions of this contract, payment of the full purchase price, after applying the total bid deposit, if any, must be made within the time specified in the Invitation and prior to delivery of any of the property. If an adjustment is made requiring additional payment, such payment must be made immediately upon notice of such adjustment. In the absence of any debts owed to the selling agency, where the total sum becoming due to the Government from the Purchaser on a contract awarded to him/her under the Invitation is less than the total amount deposited with his/her bid, the difference will be promptly refunded and also, deposits accompanying bids which are not accepted will be promptly refunded to the Bidder. No refund or demands will be made for any amount less than one dollar (\$1).

7. TITLE.

Unless otherwise provided in the Invitation, title to the property sold hereunder shall vest in the Purchaser as and when removal is effected. On all motor vehicles and motor-propelled or motor-drawn equipment requiring licensing by a State motor vehicle regulatory agency, a certificate of release, Standard Form 97, will be furnished for each vehicle and piece of equipment unless otherwise provided in the Invitation.

8. DELIVERY, LOADING, AND REMOVAL OF PROPERTY.

a. Unless otherwise provided in the Invitation, the Purchaser shall be entitled to obtain the property upon full payment therefor with delivery being made only from the exact place where the property is located within the installation. The Purchaser must make all arrangements necessary for packing, removal, and transportation of property. The Government will not act as liaison in any fashion between the Purchaser and carrier, nor will the Government recommend a specific common carrier. Loading will only be performed as set forth in the Invitation, and unless otherwise provided in the Invitation, loading will not be performed on Saturdays, Sundays, Federal holidays, or any date that the installation where the property is located is closed. Where it is provided that the Government will load, the Government will make the initial placement of the property on conveyance(s) furnished by the Purchaser and the initial placement of the Purchaser's conveyance shall be as determined by the Government. Unless otherwise provided in the Invitation, the Government will not block, chock, brace, lash, band, or in any other manner secure the cargo on such conveyance(s) furnished by the Purchaser.

b. Where it is provided in the Invitation that the Government will not load or that the Purchaser will load, the Purchaser will make all arrangements and perform all work necessary to effect removal of the property. The Purchaser shall remove the property at his/her expense within the period of time allowed in the Invitation. If the Contracting Officer determines that the failure to remove the property within the period of time originally allowed arose out of causes beyond the control and without the fault or negligence of the Purchaser, such determination shall be reduced to writing, and a reason-

able extension of time for removal shall be allowed. Such causes may include, but are not restricted to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes, and severe weather. If the Purchaser is permitted to remove the property after the expiration of the time originally allowed for removal or any additional time allowed by the Contracting Officer pursuant to this clause, the Government, without limiting any other rights which it may have, may require the Purchaser to pay a reasonable storage charge. The Purchaser shall reimburse the Government for any damage to Government property caused during the removal operations by the Purchaser or his/her authorized representative.

c. Items purchased under the Invitation will be released only to the Purchaser or his/her authorized representative. The authorized representative must furnish authorization from the Purchaser to the Custodian of the property location before any delivery of release will be made. When property is described as being boxed, packed, crated, skidded, or in containers, the Government does not warrant that the property, as packaged, is suitable for shipment.

d. Segregation, culling, or selection of property for the purpose of effecting partial or increment removals will not be permitted except as specifically authorized and prescribed by the Government.

9. DEFAULT.

If, after the award, the Purchaser breaches the contract by failure to make payment within the time allowed by the contract as required by Condition No. 6, or by failure to remove the property as required by Condition No. 8, then the Government may send the Purchaser a 15-day written notice of default (calculated from date of mailing), and upon Purchaser's failure to cure such default within that period (or such further period as the Contracting Officer may allow) the Purchaser shall lose all right, title, and interest which he/she might otherwise have acquired in and to such property as to which a default has occurred. The Purchaser agrees that in the event he/she fails to pay for the property or remove the same within the prescribed period(s) of time, the Government shall be entitled to retain (or collect) as liquidated damages a sum equal to the greater of (a) 20 percent of the purchase price of the item(s) as to which the default has occurred, or (b) \$25, whichever is greater: Provided, That in the event of multiple awards of items under a single Invitation for Bids, the amount to be charged, if the minimum charge provided for in (b) above is applicable, shall be determined by the total purchase price reflected in the award documents: Provided further, That the maximum sum which may be recovered by the Government as damages for failure of the Purchaser to pay for and remove the property shall be the formula amount. The Government shall specifically apprise the Purchaser, either in its original notice of default (or in separate subsequent written notice), that upon the expiration of the period prescribed for curing the default, the formula amount will be retained (or collected) by the Government as liquidated damages. However, if the property was sold on a "per lot" basis and the Purchaser removes a portion of the lot but fails to remove the balance, no portion of the purchase price will be refunded. If the Purchaser otherwise fails in the performance of his/her obligations, the Government may exercise such rights and may pursue such remedies as are provided by law or under the contract.

10. SETOFF OF REFUNDS.

The Bidder or Purchaser agrees that the selling agency may use all or a portion of any bid deposit or refund due him/her to satisfy, in whole or in part, any debts arising out of prior transactions with the Government.

11. INTEREST.

Notwithstanding any other provision of this contract, unless paid within 30 calendar days from the date of first written demand, all amounts that become payable by the Purchaser to the Government under this contract shall bear simple interest at the rate which has been established by the Secretary of the Treasury as provided in Section 12 of the Contract Disputes Act of 1978 (Public Law 95-563), from the date of first written demand until paid.

12. ADJUSTMENT FOR VARIATION IN QUANTITY OR WEIGHT.

Unless otherwise provided in the Invitation, when property is sold by a unit other than "weight", the Government reserves the right to vary the quantity tendered or delivered to the Purchaser by 10 percent; when the property is sold by "weight", the Government reserves the right to vary the weight tendered or delivered to the Purchaser by 25 percent. The purchase price will be adjusted upward or downward in accordance with the unit price and on the basis of the quantity or weight actually delivered. Unless otherwise specifically provided in the Invitation, no adjustment for such variation will be made where property is sold on a "price for the lot" basis.

13. WEIGHING, SWITCHING, AND SPOTTING.

Where weighing is necessary to determine the exact purchase price, the Purchaser shall arrange for and pay all expenses of weighing the property (unless Government scales are available on the premises). All switching and spotting charges shall be paid by the Purchaser unless such services are performed with Government-owned or Government-operated locomotives on Government property. When removal is by truck, weighing shall be under the supervision of the Government and at its option on: (a) Government scales, (b) certified scales, or (c) other scales acceptable to both parties. When removal is by rail, weighing shall be on railroad track scales, or by other means acceptable to the railroad for freight purposes.

14. RISK OF LOSS.

Unless otherwise provided in the Invitation, the Government will be responsible for the care and protection of the property subsequent to it being available for inspection and prior to its removal. Any loss, damage, or destruction occurring during such period will be adjusted by the Contracting Officer to the extent it was not caused directly or indirectly by the Purchaser, its agents, or employees. At the discretion of the Contracting Officer, the adjustment may consist of rescission. With respect to losses only, in the event the property is offered for sale by the "lot," no adjustment will be authorized under this provision unless the Government is notified of the loss prior to removal from the installation of any portion of the lot with respect to which the loss is claimed.

15. LIMITATION ON GOVERNMENT'S LIABILITY.

Except for reasonable packing, loading, and transportation costs (such packing, loading, and transportation costs being recoverable only when a return of property at Government cost is specifically authorized in writing by the Contracting Officer), the measure of the Government's liability, in any case where liability of the Government to the Purchaser has been established, shall not exceed refund of such portion of the purchase price as the Government may have received.

16. ORAL STATEMENTS AND MODIFICATIONS.

Any oral statement or representation by any representative of the Government, changing or supplementing the Invitation or

contract or any Condition thereof, is unauthorized and shall confer no right upon the Bidder or Purchaser. Further, no interpretation of any provision of the contract, including applicable performance requirements, shall be binding on the Government unless furnished or agreed to, in writing, by the Contracting Officer or his/her designated representative.

17. COVENANT AGAINST CONTINGENT FEES.

a. The Purchaser warrants that no person or agency has been employed or retained to solicit or obtain this contract upon an agreement or understanding for a contingent fee, except a bona fide employee or agency. For breach or violation of this warranty, the Government shall have the right to annul this contract without liability or, in its discretion, to deduct from the contract price or consideration, or otherwise recover, the full amount of the contingent fee.

b. "Bona fide agency," as used in this clause, means an established commercial or selling agency, maintained by a Purchaser for the purpose of securing business, that neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds itself out as being able to obtain any Government contract or contracts through improper influence.

c. "Bona fide employee," as used in this clause, means a person, employed by Purchaser and subject to the Purchaser's supervision and control as to time, place, and manner of performance, who neither exerts nor proposes to exert improper influence to solicit or obtain Government contracts nor holds out as being able to obtain any Government contract or contracts through improper influence.

d. "Contingent fee," as used in this clause, means any commission, percentage, brokerage, or other fee that is contingent upon the success that a person or concern has in securing a Government contract.

e. "Improper Influence," as used in this clause, means any influence that induces or tends to induce a Government employee or officer to give consideration or to act regarding a Government contract on any basis other than the merits of the matter.

18. OFFICIALS NOT TO BENEFIT.

No member of or Delegate to Congress, or resident commissioner, shall be admitted to any share or part of this contract, or to any benefit arising from it. However, this clause does not apply to this contract to the extent that this contract is made with a corporation for the corporation's general benefit.

19. CERTIFICATE OF INDEPENDENT PRICE DETERMINATION.

a. The Purchaser certifies that--

(1) The prices in this offer have been arrived at independently, without, for the purpose of restricting competition, any consultation, communication, or agreement with any other Purchaser or competitor relating to (i) those prices, (ii) the intention to submit an offer, or (iii) the methods or factors used to calculate the prices offered;

(2) The prices in this offer have not been and will not be knowingly disclosed by the Purchaser, directly or indirectly, to any other Purchaser or competitor before bid opening (in the case of a formally advertised solicitation) or contract award (in the case of a negotiated solicitation) unless otherwise required by law; and

(3) No attempt has been made or will be made by the Purchaser to include any other concern to submit or not to submit an offer for the purpose of restricting competition.

b. Each signature on the offer is considered to be a certification by the signatory that the signatory--

(1) Is the person in the Purchaser's organization responsible for determining the prices being offered in this bid or proposal, and that the signatory has not participated and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above; or

(2)(i) Has been authorized, in writing, to act as agent for the principals in certifying that those principals have not participated, and will not participate in any action contrary to subparagraphs (a)(1) through (a)(3) above.

(ii) As an authorized agent, does certify that the principals have not participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above, and

(iii) As an agent, has not personally participated, and will not participate, in any action contrary to subparagraphs (a)(1) through (a)(3) above.

c. If the Purchaser deletes or modifies subparagraph (a)(2) above, the Purchaser must furnish with its offer a signed statement setting forth in detail the circumstances of the disclosure.

20. ASSIGNMENTS OF CONTRACTS.

Any contract awarded under the Invitation is subject to the provisions of 41 U.S.C. 15 which generally precludes assignment of such contract.

21. CLAIMS LIABILITY.

The Bidder or Purchaser agrees to save the Government harmless from any and all actions, claims, debts, demands, judgments, liabilities, costs and attorneys' fees arising out of, claimed on account of, or in any manner predicated upon loss of or damage to property and injuries, illness or disabilities to or death of any and all persons whatsoever, including members of the general public, or to the property of any legal or political entity including State, local and interstate bodies, in any manner caused by or contributed to by the Bidder or Purchaser, its agents, servants, employees, or any person subject to its control while in, upon or about the sale site and/or the site on which the property is located, or while the property is in the possession of or subject to the control of the Bidder or Purchaser, its agents, servants or employees after the property has been removed from Government control.

22. WITHDRAWAL OF PROPERTY AFTER AWARD.

The Government reserves the right to withdraw for its use any or all of the property covered by this contract, if a bona fide requirement for the property develops or exists prior to actual removal of the property from Government control. In the event of a withdrawal under this condition, the Government shall be liable only for the refund of the contract price of the withdrawn property or such portion of the contract price as it may have received.

23. ELIGIBILITY OF BIDDERS.

The Bidder warrants that he/she is not: (a) under 18 years of age; (b) an employee of an agency of the Federal Government (either as a civilian or as a member of the Armed Forces of the United States, including the United States Coast Guard, on active duty) prohibited by the regulations of that agency from purchasing property sold hereunder; (c) an agent or immediate member of the household of the employee in (b), above. For

breach of this warranty, the Government shall have the right to annul this contract without liability.

24. REQUIREMENTS TO COMPLY WITH APPLICABLE LAWS AND REGULATIONS.

It is the Bidder's responsibility to ascertain and comply with all applicable Federal, State, local, and multi-jurisdictional laws, ordinances, and regulations pertaining to the registration, licensing, handling, possession, transportation, transfer, export, processing, manufacture, sale, use or disposal of the property listed in the Invitation. Purchasers or users of this property are not excused from any violation of such laws or regulations either because the United States is a party to this sale or has had any interest in the property at any time.

25. DEFINITIONS.

As used herein, the following terms shall have the meaning set forth below:

a. "Telegraphic bid" and "telegraphic notice" include bids and notices by telegram or by mailgram.

b. "Contracting Officer" means the person accepting the bid in whole or in part on behalf of the Government, and any other officer or civilian employee who is a properly designated Contracting Officer; and includes, except as otherwise provided in this contract, the authorized representative of a Contracting Officer acting within the limits of the representative's authority.

c. A "small business concern" for the purpose of the sale of Government-owned property is a concern which can qualify under the small business classification criteria referenced in 13 CFR § 121.3-9.